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HAROLD B. WILLEY, Cler

No. 426

IN THE

# Supreme Court of the United States

L. B. GLOVER, ET AL., *Petitioners and Appellants Below*

v.

W. P. H. McFADDIN, ET AL.,
*Respondents and Appellees Below*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## BRIEF FOR RESPONDENTS IN OPPOSITION

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# INDEX


| | PAGE |
|---|---|
| JURISDICTION | 1 |
| PETITIONERS' MISQUOTE RECORD | 2 |
| QUESTIONS PRESENTED | 3 |
| ARGUMENT | 3 |
| PETITIONERS' PIVOTAL ISSUES WITHOUT MERIT | 4 |
| A. Aliens could not inherit | 4 |
| B. Treaty of Amity has no application | 4 |
| C. Relationship of cotenancy not established | 5 |
| D. Respondents have title by adverse possession | 5 |
| CONCLUSION | 6 |


# AUTHORITIES


| | |
|---|---|
| Blythe v. Easterling, 20 Tex. 565 | 4 |
| Douthit v. Southern, 155 S.W. 315 | 4 |
| Franklin v. Piper, 23 S.W. 942 | 5 |
| Halliman v. Peebles, 1 Tex. 673 | 4 |
| Hornsby v. Bacon, 20 Tex. 556 | 4 |
| Middleton v. McGrew, 64 U.S. (23 How.) 45, 16 L. Ed. 403 | 4 |
| Wardlow v. Miller, 69 Texas 398 | 5 |
| Webb Heirs v. Kirby Lbr. Co., (Tex. Civ. App.), 107 S.W. 581 | 4 |
| Yates v. Iams, 10 Tex. 168 | 4 |

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MAY IT PLEASE THE COURT:

The opinion of the Court of Appeals accurately states the facts on which the case is based and correctly decided the law applicable thereto. 205 Fed. 2d 1, (Record 380-381). The circumstances do not warrant an extended reply for the petition not only fails to show prima facie a case for the issuance of a writ, but does definitely show that it is frivolous upon its face and repeatedly misquotes the record in the court below.

### Jurisdiction

No grounds for jurisdiction of this court is alleged in the petition for certiorari.

This suit involves a controversy between private parties

over the title to land in Texas. It is clear from the opinion of the Court of Appeals, as well as from the petition for certiorari, that the decision of the Court does not involve principles, the application of which is of wide public or governmental interest. The decision involves a question of concern only to the immediate parties, a question of no importance to the public. The judgment of the Court of Appeals is correct and is not in conflict with any other decision so as to warrant further review of the case by this court.

### Petitioners Misquote the Record

Throughout the petition and the brief in support thereof, statements are repeatedly made "That Pelham Humphries died intestate in what is now Texas, Sept. 2, 1835, leaving no heirs in Mexico, *but leaving his agent William English in charge of said land.*"* (Petition, pgs. 2, 4, 5, 6, 8, 15, 17.). Pages 25, 26 and 27 of the Transcript are cited by Petitioners as authority for the statement that Pelham Humphries left his agent William English in charge of said land.

The Transcript pages 25, 26 and 27 show that petitioners, instead of claiming that English was an agent of Pelham Humphries, *deny* that William English was agent for Pelham Humphries, and allege in their pleading that the instruments involving William English were "manufactured," "forged" and "fraudulent." After quoting the instrument in question in their pleading petitioners alleged "That the said document aforesaid was not executed by Pelham Humphries but was 'manufactured' by the conspirators aforesaid," (Tr. 26-27) and that "the said document was not executed by Pelham Humphries nor by Pelham Humphries under the assumed name of William Humphries,

* Emphasis ours.

nor by William Humphries his brother, but by rank conspirators, and *that such instrument is a rank forgery,** and was executed for the express purpose of asserting a sort of pretended claim on said land aforesaid, and the conspirators proceeded to and did create a sort of pretended claim on said land. That although this instrument was purportedly executed by Pelham Humphries after his death, it was never recorded until December 26, 1860, or twenty-four years later." (Tr. 27)

In reference to the treaty of 1819, with Spain, upon which petitioners seem to lay great stress, it was nowhere mentioned in trial court nor in the brief in the Court of Appeals. The first mention thereof was made in oral argument before the Court of Appeals. Suffice it to say that actually the treaty with Spain has absolutely nothing whatsoever to do with the issues involved since Mexico became a sovereign nation by the Cordova Treaty of 1821, between Mexico and Spain.

## Questions Presented

Whether or not the Court of Appeals erred in affirming the judgment of the trial court and its holding the petitioners are not entitled to the land involved, because the persons under whom they claim were aliens to the Republic of Mexico and as such could not inherit same.

## Argument

At the risk of unnecessarily lengthening this reply and unduly burdening the court, we respectfully submit that none of the so-called "Pivotal Issues Presented" of petitioners should be decided favorably to petitioners, as will hereinafter be demonstrated.

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* Emphasis ours.

**Petitioners' Pivotal Issues Are Without Merit**

A. The Court of Appeals correctly decided that the persons under whom petitioners claim were aliens to the Republic of Mexico, and therefore could not inherit the land in controversy under the Mexican law then in full force and effect. MIDDLETON v. MCGREW, 64 U.S. (23 Howard) 45, 16 L. Ed. 403; WEBB HEIRS v. KIRBY LUMBER CO. (Tex. Civ. App.), 107 S.W. 581; HALLIMAN v. PEEBLES, 1 Tex. 673; YATES v. IAMS, 10 Tex. 168; HORNSBY v. BACON, 20 Tex. 556; BLYTHE v. EASTERLING, 20 Tex. 565; DOUTHIT v. SOUTHERN, 155 S.W. 315.

Petitioners attempt to distinguish the cases cited above from the case at bar on the theory that on the date of the death of the original grantor, Pelham Humphries, on September 2, 1835, the land was in possession of his agent, one William English, and therefore the property would not escheat to the Mexican Government. Of course, it is a fundamental proposition of law that even if William English were the agent of Pelham Humphries this agency would terminate upon the death of the principal, Pelham Humphries. However, as pointed out elsewhere herein, the petitioners did not, until oral argument in the Court of Appeals, ever claim that William English was an agent of Pelham Humphries, but to the contrary repeatedly attempted by their pleadings to avoid the effect of the instruments *deeding* the land in controversy to William English. Their pleadings alleged that the instruments in question were manufactured, forged and formed part of a conspiracy to deprive petitioners' ancestors of title to the land in controversy. (Tr. 25, 26 and 27)

B. The treaty of Amity between the United States and Spain, on the 22nd day of February, 1819, has no application to any issue involved in this lawsuit. Mexico won her independence from Spain in 1821, and became a sovereign

nation; thereafter citizens of Mexico were no longer Spaniards, but Mexicans, and regardless of the provisions of the amity treaty between the United States and Spain in 1819, such provisions could not in any manner affect the rights of citizens of the Republic of Mexico, which had been in existence some fourteen years prior to the alleged death of Pelham Humphries. Furthermore, this question was not raised in the court below.

C. There is no merit in this issue because even if respondents had purchased an undivided 2/9ths interest in the property from the heirs of Elisha V. Humphries, Jr., such purchase would not make respondents tenants in common with the petitioners, because under the Mexican laws of tenancy in force at Pelham Humphries' death, the kindred of the whole blood took to the exclusion of the kindred of the half blood. WARDLOW v. MILLER, 69 Tex. 398; FRANKLIN v. PIPER, 23 S.W. 942.

Petitioners' pleadings alleged in many places that Elisha V. Humphries, Jr. was a half brother of Pelham Humphries and that upon the death of Pelham Humphries there survived him William Humphries and Mary Jane Humphries, brothers and sisters of the whole blood, and Elisha V. Humphries of the half blood.

D. This question has no merit because unless and until petitioners showed some title in themselves it was unnecessary for respondents to prove anything under Texas rules of pleadings. Petitioners refused to recognize the fundamental principles of trying titles to lands in Texas—that the plaintiff must recover, if at all, upon the strength of his own title and not upon the weakness of his adversary's.

In connection with respondents' issue on limitation, we are constrained to point out that petitioners have admitted that respondents were in possession of the land and premises from 1860 to the date of the trial, and would be entitled

to the land under the limitation statutes of the State of Texas, unless such statutes were tolled by facts alleging fraud, ignorance, etc. While the Court of Appeals did not pass upon this issue, since it was not necessary to a determination of the controversy, it is clearly demonstrated in respondents' brief in the Court of Appeals, Point III, that respondents have in law and in fact perfected title to the land in controversy under the Texas statutes of limitation.

## Conclusion

The petition for certiorari should be denied.

Respectfully submitted,

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Copy of this brief in opposition was on the 19 day of November, A. D. 1953, mailed to E. Garland Brown and J. B. Ator, Corpus Christi, Texas, and to Lewis B. Perkins, Washington, D. C., Attorneys for petitioner.

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